

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	
Broadnet Teleservices LLC	)	
Petition for Declaratory Ruling	)	
	)	
National Employment Network Association	)	
Petition for Expedited Declaratory Ruling	)	
	)	
RTI International	)	
Petition for Expedited Declaratory Ruling	)	

To:            Secretary, Federal Communications Commission

**PETITION FOR RECONSIDERATION**

**PROFESSIONAL SERVICES  
COUNCIL**

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## **EXECUTIVE SUMMARY**

Professional Services Council (“PSC”), by counsel, respectfully requests that the Commission reconsider that portion of its declaratory ruling released on July 5, 2016, that the term “person,” as used in Section 227 of the Communications Act and the Commission’s rules implementing that provision, “does not include the federal government or agents acting within the scope of their agency under common-law principles of agency.”<sup>1</sup>

The opening paragraph of the Commission’s ruling clarified that “the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government’s instructions.”<sup>2</sup> Thus, the ruling indicates the Commission intended to grant meaningful relief to government contractors and to permit the use of efficient and cost-effective communications technology by federal government agencies in advancement of their missions. PSC agrees with the broad relief described on the first page of the ruling, as well as the policy rationales underlying the ruling, but not with the imposition of an agency requirement, which appears to be inconsistent with the Commission’s intended relief.

The Commission appears, unintentionally, to have substituted “common-law principles of agency” for the “comply-with-the-government’s-instructions” rubric with which it began its analysis. In doing so, the declaratory ruling has the effect of granting less relief than the Commission may have intended and which results in promulgating a standard that is at odds with Supreme Court precedent. Three facts make this manifestly clear.

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<sup>1</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, FCC 16-72, ¶ 10 (July 5, 2016) (“Declaratory Ruling”) (emphasis added).

<sup>2</sup> *Id.* ¶ 1.

*First*, none of the petitions for declaratory ruling in the above-captioned matter conditioned their request for relief on “common law agency” grounds. By adopting the common law agency standard, the Commission’s ruling provides a more narrow form of relief—one that is at odds with its apparent intention and that imposes a significant constraint on the use of cost-effective communications technology by federal government agencies.

*Second*, it is well established that government contractors acting on behalf of the federal government and in accordance with the terms of their contract are generally not considered agents of the government. Indeed, government contracts often contain language that expressly states the government contractor is *not* in an agency relationship with the government.

*Third*, to the extent the Commission has interpreted the Supreme Court’s *Campbell-Ewald v. Gomez* decision to include a common-law agency requirement, it is mistaken. In that case, the Supreme Court gave no hint that it wished to alter seventy-five years of precedent, which holds that a contractor that acts on behalf of the federal government and complies with the government’s instructions is shielded from liability through the doctrine of derivative sovereign immunity, to impose an additional requirement that the contractor also be a common law agent.

There is nothing in the Commission’s order that suggests the Commission knowingly intended its reference to a “common-law agency” analysis to mean anything more or less than (1) acting under a government contract and (2) consistent with the directions of the government. Because even government contractors that adhere to the terms of their agreements are routinely considered not to be “common law agents” of the government, PSC requests that the Commission reconsider its decision only to the extent necessary to correct this error. If the July ruling is left unmodified, the result is narrower relief than the Commission appears to have intended.

## TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY .....	ii
I. STANDING .....	2
II. FACTUAL BACKGROUND .....	3
III. ARGUMENT .....	7
A. The Commission Appears to Have Intended to Grant Relief to Government Contractors Acting on Behalf of the Federal Government and in Accordance with the Terms of a Government Contract and the Government's Directions. ....	8
B. The Commission Should Modify Its Grant of Relief to Afford Government Contractors the Relief It Appears to Have Intended.....	12
IV. Conclusion .....	16

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To:                    Secretary, Federal Communications Commission

**PETITION FOR RECONSIDERATION**

Professional Services Council (“PSC”), by counsel and pursuant to Section 405(a) of the Communications Act of 1934 and Section 1.106(f) of the Commission’s rules,<sup>1</sup> hereby petitions for reconsideration of that portion of the Commission’s declaratory ruling released on July 5, 2016, that the term “person” as used in Section 227 of the Communications Act and the Commission’s rules implementing that provision “does not include the federal government or agents acting within the scope of their agency under common-law principles of agency.”<sup>2</sup> As explained below, the declaratory ruling does not appear to grant the relief the Commission seems to have intended because it imposes an agency limitation not found in any of the petitions for

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<sup>1</sup> 47 U.S.C. § 405(a); 47 C.F.R. §1.106(f).

<sup>2</sup> Declaratory Ruling ¶ 10.

declaratory ruling or the Commission's own description of its relief on the first page of the ruling. The agency limitation may not provide the Commission's apparently intended relief because government contractors are routinely not considered to be agents of the government, and in many instances government contracts contain express language to this effect. That the Commission may not actually have provided the relief described on the first page of its ruling is further supported by the fact that the *Campbell-Ewald* decision upon which it based its ruling contains no reference to common-law agency principles. Virtually every court of appeals to have considered the issue has adopted the same formulation.

Accordingly, PSC respectfully requests that the Commission grant its petition for reconsideration by modifying only that portion of the declaratory ruling necessary to provide TCPA relief to government contractors acting on behalf of the federal government, in accordance with their contract's terms and the government's directives, without regard to whether a common-law agency relationship exists.

## **I. STANDING**

PSC has standing to bring the instant Petition for Reconsideration. Under Section 1.106(b) of the Commission's rules, "any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority[] may file a petition requesting reconsideration of the action taken."<sup>3</sup> PSC represents more than 400 member companies that provide federal agencies with various services in accordance with the terms of federal contracts. The trade association's members employ thousands of Americans in all 50 states. PSC's members are adversely affected by the declaratory ruling because many PSC members engage in calling activities on behalf of federal

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<sup>3</sup> 47 C.F.R. § 1.106(b)(1).

agencies that could be covered by the TCPA and this ruling and, although they adhere to the terms of their government contracts, they are not generally considered agents of the government under common-law agency principles. PSC therefore has standing to bring this Petition for Reconsideration. PSC also filed a brief amicus curie in the Supreme Court's *Campbell-Ewald* case relating to the important scope of derivative sovereign immunity under the TCPA.<sup>4</sup> PSC did not participate at an earlier stage of the proceeding because none of the three petitions for declaratory ruling raised the common-law agency argument in a manner that afforded notice to interested parties that it would be used as a means to limit the relief awarded to government contractors.

## II. FACTUAL BACKGROUND

1. The Telephone Consumer Protection Act ("TCPA") only makes it unlawful for a "person" to undertake certain kinds of calling activities.<sup>5</sup>

2. In the last two years, the Commission has considered no fewer than three separate petitions for declaratory ruling asking it to confirm that the TCPA does not restrict calls made by or on behalf of the federal government.<sup>6</sup>

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<sup>4</sup> Professional Services Council, *PSC Asks SCOTUS to Protect Contractor Rights* (July 22, 2015), available at [http://www.pscouncil.org/News2/NewsReleases/2015/PSC\\_Askes\\_SCOTUS\\_to\\_Protect\\_Contractor\\_Rights.aspx?WebsiteKey=fae489a9-a93a-4c2d-9230-615ba5cc8e5e](http://www.pscouncil.org/News2/NewsReleases/2015/PSC_Askes_SCOTUS_to_Protect_Contractor_Rights.aspx?WebsiteKey=fae489a9-a93a-4c2d-9230-615ba5cc8e5e).

<sup>5</sup> 47 U.S.C. § 227(b)(1) (prohibiting "any person within the United States" from making certain kinds of calls).

<sup>6</sup> See Broadnet Teleservices LLC, Petition for Declaratory Ruling, CG Docket No. 02-278 (Sept. 16, 2015) ("Broadnet Petition"); National Employment Network Association, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (Aug. 5, 2014) ("NENA Petition"); RTI International, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (Sept. 29, 2014) ("RTI Petition").

3. On September 16, 2015, Broadnet Teleservices, LLC (“Broadnet”) filed a Petition for Declaratory Ruling with the FCC.<sup>7</sup> The Broadnet Petition asked the FCC to “declare that the Telephone Consumer Protection Act (‘TCPA’) and the TCPA rules do not apply to calls made by or on behalf of federal, state, and local governments when such calls are made for official purposes.”<sup>8</sup>

4. Broadnet contended that the plain language of the TCPA demonstrates that the TCPA does not apply to calls made by government entities because the Communications Act, in which the TCPA is codified, defines a “person” as an “individual, partnership, association, joint-stock company, trust or corporation” and government entities fall outside that definition.<sup>9</sup> Additionally, Broadnet asserted that the language of the TCPA, as supported by Supreme Court precedent, demonstrates that calls made by or on behalf of government entities, including legislative, judicial, and executive bodies, and those working on behalf of government entities and officials, are not subject to the TCPA.<sup>10</sup>

5. On September 29, 2014, RTI International (“RTI”) filed a Petition for Declaratory Ruling with the FCC.<sup>11</sup> The RTI Petition asked the Commission to “confirm that the TCPA does not restrict research survey calls made by or on behalf of the federal government.”<sup>12</sup> RTI asserted that “the plain language of the TCPA and the FCC’s TCPA rules excludes calls made by

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<sup>7</sup> Broadnet Petition.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 2, 5–7; *see also* 47 U.S.C. § 153(39).

<sup>10</sup> *Id.* at 5–7.

<sup>11</sup> RTI Petition.

<sup>12</sup> *Id.* at 1.

or on behalf of the federal government” because the statute only applies to “person[s],” and the United States falls outside the plain meaning of the statute’s definition of “person.”<sup>13</sup> It argued that “the legislative history of the TCPA confirms that Congress did not intend to restrict” calls made by or on behalf of the federal government, as the legislative history “focuses on problems arising from calls by non-governmental entities.”<sup>14</sup>

6. On November 19, 2014, the FCC issued a public notice seeking comment on the issues raised in the RTI Petition.<sup>15</sup> The deadline for comments and reply comments closed on December 23, 2014 and January 12, 2015, respectively. Among RTI’s most vocal supporters were three members of Congress—David Price, G.K. Butterfield, and Renee Ellmers. In Congressional Correspondence received January 8, 2015, those members explained that “[t]he goal of the TCPA has never been to impede communications from the federal government.”<sup>16</sup> The three legislators further stated that “federal government agencies fall outside the plain meaning” of “person,” as defined in the Communications Act and that this understanding is in accord with Supreme Court precedent.<sup>17</sup>

7. On August 5, 2014, the National Employment Network Association (“NENA”) filed a Petition for Expedited Declaratory Ruling.<sup>18</sup> The NENA Petition asked the FCC to

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<sup>13</sup> *Id.* at 1–2, 5–7.

<sup>14</sup> *Id.* at 2, 8.

<sup>15</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by RTI International*, Public Notice, 29 FCC Rcd 13916 (Nov. 19, 2014).

<sup>16</sup> Comments of Congressman David Price, Congressman G.K. Butterfield and Congresswoman Renee Ellmers, CG Docket No. 02-278, at 1 (Jan. 8, 2014).

<sup>17</sup> *Id.*

<sup>18</sup> NENA Petition.

“clarify that, in certain limited circumstances, a long-standing relationship with a federal agency logically implies consent to receive autodialed and prerecorded non-telemarketing calls and text messages under the TCPA.”<sup>19</sup> Although not addressing the personhood issue directly, the NENA Petition also asked the Commission to clarify that “calls can be made through a public or private intermediary or associated third party that ‘stands in the shoes’ of the federal government.”<sup>20</sup>

8. On September 19, 2014, the FCC issued a public notice seeking comment on the issues raised in the NENA Petition.<sup>21</sup> The deadline for comments and reply comments closed on October 20, 2014, and November 3, 2014, respectively.

9. On February 9, 2016, the Supreme Court handed down its ruling in *Campbell-Ewald v. Gomez*. With respect to derivative sovereign immunity, the Court held that this government contractor was not entitled to derivative sovereign immunity for an alleged violation of the TCPA because the contractor failed to comply with the government’s direction that text messages be sent only to individuals who had consented to receive such messages.<sup>22</sup> In its analysis, the Court reiterated the derivative sovereign immunity standard first put forth in *Yearsley v. W.A. Ross Cost. Co.*, where the Supreme found that a government contractor was not liable for damages caused as a result of work it performed under a government contract, as long

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<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by National Employment Network Association*, Public Notice, 29 FCC Rcd 11268 (Sept. 19, 2014).

<sup>22</sup> 136 S.Ct. at 672-74.

as the authority to perform the contract was “within the constitutional power of Congress” and the contractor performed as directed by the government.<sup>23</sup>

10. On July 5, 2016, the Commission issued a declaratory ruling in response to the petitions filed by Broadnet, RTI, and NENA. In accordance with the relief sought by these petitioners, the opening paragraph of the ruling affirms that “the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government’s instructions.”<sup>24</sup> In subsequent paragraphs, however, the Commission introduces a common-law agency limitation not requested by any of the petitioners or justified by the Supreme Court’s *Campbell-Ewald* decision.

### III. ARGUMENT

The Commission should modify that portion of its declaratory ruling to provide TCPA relief to government contractors acting on behalf of the federal government, in accordance with their contracts and government directions, without regard to whether a common-law agency relationship exists. *First*, none of the petitions for declaratory ruling requested relief in the form of an “agency” requirement. In fact, the petitioners all reaffirm that there are two criteria to be met in order to qualify for the exemption. Moreover, providing relief to contractors that act on behalf of the government and follow its directives is consistent with Supreme Court precedent and congressional intent, and furthers the public interest. *Second*, government contractors acting on behalf of the federal government and in accordance with the terms of a contract often are not considered agents of the government. In fact, many government contracts expressly disclaim

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<sup>23</sup> 309 U.S. 18, 20 (1940).

<sup>24</sup> Declaratory Ruling ¶ 1.

any sort of agency relationship. The Commission appears to have intended to facilitate the use of cost-effective communications technology by government agencies in furtherance of their missions, not to constrain the relief or impose additional obstacles.

**A. The Commission Appears to Have Intended to Grant Relief to Government Contractors Acting on Behalf of the Federal Government and in Accordance with the Terms of a Government Contract and the Government's Directions.**

There can be no doubt that the first page of the Commission's ruling describes the specific relief the petitioners requested. Each petition for declaratory ruling sought clarification on whether government contractors calling on behalf of the federal government and in accordance with the terms of a contract and government directives are immune from TCPA liability.<sup>25</sup> None of the petitions requested clarity on whether TCPA liability would turn on a common-law agency relationship. The opening paragraph of the Commission's ruling confirms this and demonstrates that the FCC intended to confer precisely the relief requested in the petitions. In relevant part, the ruling reads: "we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in conduct of official government business except when a call made by a contractor does not comply with the government's instructions."<sup>26</sup>

Relief for contractors acting "on behalf of" the U.S. government and in accordance with the terms of a government contract and the government's directions is consistent with the Supreme Court's *Campbell-Ewald* decision on derivative sovereign immunity, which the Commission discussed in the ruling. There, the Court suggested that a contractor that complies with the government's instructions and acts within the scope of validly conferred congressional

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<sup>25</sup> See Broadnet Petition at 1; RTI Petition at 1; NENA Petition at 1.

<sup>26</sup> Declaratory Ruling ¶ 1.

authority would be immune from TCPA liability.<sup>27</sup> *Campbell-Ewald* did not impose a common-law agency requirement as a condition for invoking derivative sovereign immunity.<sup>28</sup> Rather, in discussing its seminal decision on derivative sovereign immunity, *Yearsley v. W.A. Ross Cost. Co.*,<sup>29</sup> which involved a government contractor performing dredging on a river, the *Campbell-Ewald* Court contrasted the *Yearsley* facts with other cases in which a government agent or employee was held liable for conduct because he “exceeded his authority” or the authority “was not validly conferred.”<sup>30</sup> The Court did not find it necessary or relevant to analyze whether the contractor in *Campbell-Ewald* was a common law agent of the government or whether such an agency relationship was a necessary condition for the contractor to assert derivative sovereign immunity under *Yearsley*.<sup>31</sup>

In fact, nothing in the *Yearsley* decision or its progeny suggests an agency relationship is a prerequisite for derivative sovereign immunity.<sup>32</sup> There, a landowner asserted a claim for damages against a private company whose work building dikes on the Missouri River, pursuant to its contract with the federal government, had washed away part of the plaintiff’s land. The Court held that the contractor could not be liable to the landowner because “the work which the contractor had done in the river bed was all authorized and directed by the Government of the

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<sup>27</sup> See *Campbell-Ewald*, 136 S. Ct. at 672-74.

<sup>28</sup> *Id.* at 673 & n.7 (declining to limit *Yearsley* derivative sovereign immunity to property damage arising out of public works projects; “Critical in *Yearsley* was not the involvement of public works, but the contractor’s performance in compliance with all federal directions.”) (emphasis added).

<sup>29</sup> 309 U.S. at 18.

<sup>30</sup> *Campbell-Ewald*, 136 S. Ct. at 673.

<sup>31</sup> *Id.*

<sup>32</sup> *Yearsley*, 309 U.S. at 20–21.

United States.”<sup>33</sup> More recent decisions addressing *Yearsley* derivative sovereign immunity for government contractors similarly do not turn on an “agency” requirement.<sup>34</sup> To the contrary, the Fifth Circuit has expressly stated that it “never held that *Yearsley* requires a common-law agency relationship between the government and a contractor.”<sup>35</sup> Thus, to the extent the Commission relied on derivative sovereign immunity case law as the source of an agency requirement, such reliance is misplaced.<sup>36</sup>

Furthermore, immunity for contractors acting “on behalf of” the U.S. government and in accordance with the terms of a government contract also “comports with congressional intent and advances the public interest.”<sup>37</sup> As the Commission explained, “there is no evidence in the text or legislative history of the TCPA that Congress intended to restrict government

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<sup>33</sup> *Id.* (“[I]t is clear that if this authority to carry out the project was validly conferred, that is, if what was done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will.”).

<sup>34</sup> See *Butters v. Vance Int’l, Inc.*, 225 F.3d 462, 466 (4th Cir. 2000) (stating that it is “well-settled law that contractors and common law agents acting within the scope of their employment for the United States have derivative sovereign immunity.”); *In re World Trade Center Disaster Site Litig.*, 521 F.3d 169, 196 (2d Cir. 2008) (citing *Yearsley* and holding that a private federal government contractor is protected by derivative sovereign immunity if it shows that (1) it “was working pursuant to the authorization and direction of the federal government” and that (2) “the acts of which the plaintiff complained fell within the scope of those government directives.”); *Myers v. United States*, 323 F.2d 580, 583 (9th Cir. 1963) (applying *Yearsley* without discussion of whether an agency relationship existed).

<sup>35</sup> *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 204 (5th Cir. 2009).

<sup>36</sup> Tellingly, the National Consumer Law Center’s (“NCLC”) petition for reconsideration merely alludes to *Yearsley*, without naming it, as “another decision” mentioned in *Campbell-Ewald*, eliding its far more definitive holding on the issue of derivative sovereign immunity. See Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration by National Consumer Law Center, CG Docket No. 02-278 (“NCLC Petition”) at 14. Pretending *Yearsley* does not exist does not erase it from the law.

<sup>37</sup> Declaratory Ruling ¶ 18.

communications.”<sup>38</sup> Moreover, because government communications foster “democratic participation”<sup>39</sup> and “public safety,”<sup>40</sup> the Commission correctly concluded that if government contractors “were subject to the TCPA’s consent requirement, . . . it would be difficult (and in some cases impossible) for the government to engage in important activities on behalf of the public.”<sup>41</sup>

The relief the Commission confers is already significantly limited to government contractors acting under the direction of the federal government. It is inconceivable that a federal government agency would instruct a contractor to conduct itself as imagined in the NCLC’s parade of horrors.<sup>42</sup> It is difficult to understand why, for example, the U.S. Food and Drug Administration, Centers for Medicare and Medicaid Services, or Department of Energy would bombard consumers, emergency rooms, or other randomly dialed consumers with untimely or unapproved calls. How would the missions of those agencies be advanced by such tactics? The NCLC does not say. Instead, NCLC seems to speculate that the conduct of federal agencies will mirror the very worst conduct of commercial telemarketers. NCLC offers no factual basis for this speculation, and the Commission should afford it no weight in its decision.

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* ¶ 19.

<sup>41</sup> *Id.* ¶¶ 18-19.

<sup>42</sup> *See generally* NCLC Petition.

**B. The Commission Should Modify Its Grant of Relief to Afford Government Contractors the Relief It Appears to Have Intended.**

Providing TCPA immunity to contractors acting “on behalf of” the U.S. government and pursuant to the terms of a government contract is in harmony with the petitioners’ requested relief, Supreme Court precedent, and congressional intent. Thus, it would seem unlikely that the Commission intended to further limit this relief by imposing a common-law agency requirement. Yet, the Commission appears unintentionally to have done just that. Specifically, in subsequent paragraphs of its ruling after page 1, the Commission substitutes “common-law principles of agency” for the far more inclusive “comply-with-the-government’s instructions” standard with which it began its analysis. Adopting an “agency” requirement to qualify for TCPA liability will improperly and unnecessarily limit the very relief the Commission described at the outset of its ruling.

As a matter of practice, the federal government regularly and expressly disclaims any agency relationship with the entities that perform services on its behalf. Government contracts often advise the performing entities that they are “acting as an independent contractor and not as an agent of the government.”<sup>43</sup> These disclaimers appear in contracts ranging from large government-wide contract vehicles for services (including “advertising and integrated marketing services”) to small contracts for fabricating park signs.<sup>44</sup> The disclaimers appear when

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<sup>43</sup> See Ex. 1, Centers for Disease Control and Prevention, CDC Information Management Services (CIMS), Solicitation No. 2010-N-11852, at B.1 (issued Dec. 7, 2009) (soliciting proposals for information services and stating: “The Contractor, acting as an independent contractor and not as an agent of the government, shall furnish . . . .”); see also *id.* at C.6 (“Independently, and not as an agent of the Government, the Contractor shall perform work as described in individual task orders.”). All contract and solicitation exhibits are provided in excerpted form to conserve space.

<sup>44</sup> See Ex. 2, General Services Administration, Professional Services Schedule, Solicitation No. FCO00CORP0000C, Refresh 24 at Solicitation Notice 1 (soliciting proposals to provide professional services, including “advertising and integrated marketing services” GSA’s

companies independently operate laboratories on the government's behalf.<sup>45</sup> They appear when entities recover funds for the government.<sup>46</sup> And the disclaimers are a contracting practice that dates back to at least World War II.<sup>47</sup> These are just some of the examples.<sup>48</sup> Indeed, much rarer are examples where the government actually identifies its contractors as its agents.

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government-wide Multiple Award Schedule, and stating: "The contractor will act independently and not as an agent of the Government."); Ex. 3, National Park Service, Interpretive Sign Fabrication, Contract No. P14PC00680, at C.3 (issued Sept. 19, 2014) (contract to fabricate interpretive wayside exhibit components, stating: "Independently, and not as an agent of the government, the contractor shall provide . . .").

<sup>45</sup> Ex. 4, National Aeronautics and Space Administration, Jet Propulsion Laboratory, Contract No. NNN12AA01C at B.1(b) (issued Oct. 1, 2012) (contract to operate a laboratory: "Notwithstanding the special relationship created by this sponsoring agreement, [the awardee] is acting as a contractor and not as an agent of the Government.").

<sup>46</sup> Ex. 5, Centers for Medicare and Medicaid Services, Recovery Audit Contractor Contract, Solicitation No. HHSM-500-2016-RFP-0003, at SOW "General Requirements" section (issued Nov. 6, 2015) (soliciting proposals to recover Medicare overpayments and stating: "Independently and not as an agent of the Government, the contractor shall furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the Government, as needed to perform all requirements of this SOW.").

<sup>47</sup> See GAO Report B-23293, Mar. 13, 1942, 21 Comp. Gen. 858 (noting that language of contract No. W-ORD-487, Article II.A.1, provided that "[t]he contractor shall, as an independent contractor and not as an agent of the government, purchase or produce, . . .") (capitalization altered), available at <http://www.gao.gov/products/471563#mt=e-report>.

<sup>48</sup> See also, e.g., Ex. 6, National Institutes of Health, Chief Information Officer-Solutions and Partners 3, Solicitation No. NIHJT2010001, at C.1 (issued Sept. 17, 2010) (soliciting proposals for information-technology services and stating: "The contractor, acting as an independent contractor and not as an agent of the government, shall furnish all materials, personnel, facilities, support and management necessary to provide the services and solutions as set forth below in accordance with the Statement of Work."); Ex. 7, U.S. Navy, Seaport-e Task Order No. N00178-08-D-549, at C.2 (issued Sept. 28, 2011) (task order to provide drinking-water remediation services and stating: "The contractor, as an independent contractor and not as an agent of the Government shall provide the support necessary to provide overall technical assistance and support for the following.").

Courts recognize this reality. Where contracts have expressly stated that a contractor is an independent agent, courts routinely have found the language to control.<sup>49</sup> Even when looking beyond express contract language, courts have been reluctant to find that contractors act as agents of the government merely because they perform contracts for the government. For example, in a dispute involving compliance with the Fair Labor Standards Act, the Supreme Court declined to find that a contractor was an agent of the government when the contractor operated a government-owned ammunition plant; the government maintained title to the site, plant and equipment; the government provided the necessary materials; and the contractor manufactured the ammunition in accordance with government direction.<sup>50</sup> The Court considered contract language that “the Contractor is an independent contractor and in no wise [sic] an agent of the Government,” but the analysis ultimately concluded that government provision of materials and close supervision of the contractor to ensure compliance with specifications was insufficient to establish an agency relationship.<sup>51</sup> Numerous other federal courts have recognized

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<sup>49</sup> See *United States v. Penn. Envtl. Hearing Bd.*, 584 F.2d 1273, 1278 (3d Cir. 1978) (“Admittedly, contract provisions do not necessarily govern a party’s legal status vis-a-vis third parties (here the Board). Yet here the language of the contracting parties is unmistakably clear, and in our opinion was specifically intended to establish the status of the one in relation to the other.”); *Lumpkins v. United States*, 187 F. Supp. 2d 535, 539 (D. Md. 2002) (“Central to the determination of whether an entity is an independent contractor are the terms of the contract defining its relationship with the Government. After examining the contract at issue in this case, the court concludes that WMS was an independent contractor. Not only is WMS working ‘independently, and not as an agent of the Government,’ but it is responsible under the contract for providing all necessary labor, materials, equipment, transportation, coordination, and supervision; hiring full-time onsite supervisory staff; and ensuring and documenting its ‘effective management and control of the work.’”) (internal citations omitted).

<sup>50</sup> *Powell v. U.S. Cartridge Co.*, 339 U.S. 497, 499–500 (1950).

<sup>51</sup> *Id.* at 505–06.

this principle as well, holding that compliance with government directives does not necessarily render an entity an agent or employee of the United States.<sup>52</sup>

Conferring common-law agent status on contractors could heighten risks for both sides without being necessary to performance.<sup>53</sup> As the principal, the government would carry the risk of being bound by its contractor-agent when not intended.<sup>54</sup> As the agent, a contractor would, among other obligations, owe the government a fiduciary duty and a duty of loyalty.<sup>55</sup> None of these risks and obligations is necessary for contractors to, for example, deliver electronic recruiting messages on the Navy's behalf, as the contractor in *Campbell-Ewald* did.

The government regularly avoids entering into principal-agent relationships with contractors; courts often do not find these relationships where they do not exist; and there are good reasons not to have principal-agent ties for much of the government's contracting needs. The principal-agent relationship is not common in the federal market. As a result, if the Commission's ruling is premised on requiring an entity to have a common-law agency relationship with the government before the entity can be excluded from the TCPA's definition

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<sup>52</sup> See, e.g., *Berkman v. United States*, 957 F.2d 108, 113–14 (4th Cir. 1992) (finding no liability on behalf of the United States under the independent contractor exception of the Federal Tort Claims Act (FTCA) despite the fact that the United States demanded compliance with its standards and had the right to inspect the independent contractor's work); *Larsen v. Empresas El Yunque, Inc.*, 812 F.2d 14, 16 (1st Cir. 1986) (holding no governmental liability under the FTCA for the independent contractor exception because the responsible party was not a federal agent as it, not the United States, ran the daily routine, despite the fact that the United States "owned and controlled" the premises on which the challenged conduct occurred).

<sup>53</sup> Principal-agent relationships are so rare in federal contracting that the Federal Acquisition Regulation (FAR) is almost silent. Only one provision addresses agency; the provision provides approval requirements for designations related to state and local taxes. FAR § 29.303(a). The FAR otherwise leaves the issue unaddressed.

<sup>54</sup> See Restatement (Third) of Agency §§ 2.01-2.03 (2006) (discussing various agent authorities).

<sup>55</sup> See *id.* §§ 8.01-8.06.

of “person,” that formulation will deny many government contractors the very relief that the Commission seems to have intended to provide them.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should grant the request for reconsideration and modify the declaratory ruling only to the extent necessary to provide TCPA relief to government contractors acting on behalf of the federal government and in accordance with a government contract and government directions, without regard to whether any common-law agency relationship exists. Such a modification will advance the public interest and bring the Commission’s July 5, 2016 ruling into complete harmony with its own primary holding as well as Supreme Court precedent.

Respectfully submitted,

**PROFESSIONAL SERVICES COUNCIL**

By: 

Alan L. Chvotkin  
Executive Vice President and Counsel  
Professional Services Council  
4401 Wilson Boulevard, Suite 1110  
Arlington, VA 22203  
(703) 875-8059

August 4, 2016

# EXHIBIT 1

<b>SOLICITATION, OFFER AND AWARD</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <span style="float: right;">▶</span>		RATING	PAGE OF PAGES 1   92
2. CONTRACT NO.	3. SOLICITATION NO. 2010-N-11852	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 12/07/2009	6. REQUISITION/PURCHASE NO.	
7. ISSUED BY Centers for Disease Control and Prevention (PGO) Procurement and Grants Office 2920 Brandywine Rd, RM 3000 Atlanta, GA 30341-5539		8. ADDRESS OFFER TO (If other than Item 7)  <div style="text-align: right;">Approved as to Form and Legality: _____</div>			

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."

#### SOLICITATION

9. Sealed offers in original and 8 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in \_\_\_\_\_ until 11:00am EST local time 01/13/2010  
(Hour) (Date)

CAUTION -- LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: <span style="float: right;">▶</span>	A. NAME	B. TELEPHONE (NO COLLECT CALLS) AREA CODE NUMBER: EXT:	C. E-MAIL ADDRESS

#### 11. TABLE OF CONTENTS

(x)	SEC.	DESCRIPTION	PAGE(S)	(x)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	64
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	5	X	J	LIST OF ATTACHMENTS	73
X	D	PACKAGING AND MARKING	16	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	17	X	K	REPRESENTATIONS, CERTIFICATIONS, AND	74
X	F	DELIVERIES OR PERFORMANCE	18			OTHER STATEMENTS OF OFFERORS	
X	G	CONTRACT ADMINISTRATION DATA	19	X	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	78
X	H	SPECIAL CONTRACT REQUIREMENTS	25	X	M	EVALUATION FACTORS FOR AWARD	91

#### OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within \_\_\_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52-232-8) <span style="float: right;">▶</span>	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS
	%	%	%	%

14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND ADDRESS OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)

15B. TELEPHONE NO. AREA CODE NUMBER EXT.	<input type="checkbox"/>	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE

#### AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 253(c)( )		23. SUBMIT INVOICES TO ADDRESS SHOWN IN <span style="float: right;">▶</span> ITEM (4 copies unless otherwise specified)	
24. ADMINISTERED BY (If other than Item 7) CODE 2543 Centers for Disease Control and Prevention (PGO) Procurement and Grants Office 2920 Brandywine Rd, RM 3000 Atlanta, GA 30341-5539		25. PAYMENT WILL BE MADE BY CODE 434 Centers for Disease Control and Prevention (FMO) PO Box 15580 404-498-4050 Atlanta, GA 30322-4018	
26. NAME OF CONTRACTING OFFICER (Type or print)		27. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	
		28. AWARD DATE	

IMPORTANT -- Award will be made on this form, or on Standard Form 26, or by other authorized official written notice.

AUTHORIZED FOR LOCAL REPRODUCTION  
PREVIOUS EDITION IS UNUSABLE

STANDARD FORM 33 (REV. 9-97)  
Prescribed by GSA  
FAR (48 CFR) 53.214©

**Option 4 Option Period 4 Items:**

ITEM	SUPPLIES / SERVICES	QTY / UNIT	UNIT PRICE	EXTENDED PRICE
4001	Information Management Services	1 Job		
4002	Management Consulting Services	1 Job		
4003	IT Infrastructure Services	1 Job		

**B.1 General**

The CDC Information Management Services (CIMS) Contract is a multiple award, indefinite delivery, indefinite quantity (IDIQ) contract to provide a broad range of information technology services to support the global health mission of the CDC. The Contractor, acting as an independent contractor and not as an agent of the government, shall furnish all materials, personnel, facilities, support and management necessary to provide the services as set forth below in accordance with the Statement of Work.

(End of Clause)

**B.2 Ordering of Services**

Orders for services will be conducted through the issuance of individual task orders in accordance with Paragraph H.64, Award of Task Orders, and the Ordering Clauses in Section I.

(End of Clause)

**B.3 Base and Option Periods**

The term of this IDIQ contract is a two (2) year base period and four (4) two-year option periods, comprising a ten (10) year ordering period if all options are exercised by the Government.

(End of Clause)

**B.4 Type of Contract**

This is a multiple award, IDIQ-type contract. At the discretion of the Contracting Officer, the government may use a variety of task order types under this contract, including Firm Fixed Price (FFP), Time and Materials (T&M), Labor-Hour (LH) or a combination thereof.

Each Request for Task Order Proposal (RFTOP) issued under this contract will identify the Government's determination of task order type.

(End of Clause)

## Section C - Description/Specification/Work Statement

### C.1 Introduction and Overview

The Centers for Disease Control and Prevention (CDC), headquartered in Atlanta, Georgia, USA, is an agency of the Department of Health and Human Services (DHHS). The Agency for Toxic Substances and Disease Registry (ATSDR), also headquartered in Atlanta, GA, is a sister public health agency in DHHS and receives many support services from CDC. Further references to CDC include ATSDR unless specified otherwise.

CDC's mission is to protect and promote health by preventing and controlling disease, injury, and disability. Specifics on CDC's goals, strategies, and organization composition can be found at [www.cdc.gov](http://www.cdc.gov). Information on ATSDR can be found at [www.atsdr.gov](http://www.atsdr.gov).

CDC is widely known and respected as a provider of timely, scientifically-based, and trusted health information. Consequently, CDC's dependence on information technology (IT), information systems, and electronic communications continues to grow rapidly and is essential to the mission and program accomplishment. Additional information on CDC's IT program can be found at: [www.cdc.gov/od/ocio](http://www.cdc.gov/od/ocio).

CDC has 15,000 employees in nearly 200 occupations with a substantial portion being scientific and medical professionals. While the largest concentrations of staff are at CDC's headquarters in Atlanta, GA, CDC has other major office and laboratory locations at: Cincinnati, Ohio; Morgantown, West Virginia; Hyattsville, Maryland; Ft. Collins, Colorado; Research Triangle Park, North Carolina; Pittsburgh, Pennsylvania; Spokane, Washington; Anchorage, Alaska; Washington, D.C.; and San Juan, Puerto Rico. CDC has employees stationed in quarantine offices in major U.S. cities, and in state and local health agencies throughout the U.S. CDC also has growing numbers of staff including locally employed staff in approximately 50 countries globally with the largest concentrations in developing countries in Africa, Central and South America, Asia, and the Caribbean.

This contract covers all components of CDC including any new organizational entities that may be added during the contract period. This contract also covers work for CDC's intergovernmental grantees, such as state, local and international health agencies, other Contractors working for CDC, and other DHHS organizational components. Numerous existing contracts, blanket purchase agreements, and task orders under other government-wide contracts are in place and work will likely continue under such through the life-cycle of those procurements. Additionally, CDC will determine when other procurement avenues shall be used as needed in individual circumstances to fulfill agency needs.

### C.2 Project Identification and Objectives

This contract shall be referred to as the CDC Information Management Services (CIMS) contract. The objectives of this contract are:

- a. Ensure CDC has ongoing timely, high quality, cost effective, efficient, innovative, and comprehensive IT and management consulting contractual services as needed leveraging industry best practices and professional standards;
- b. Ensure related and interdependent functions and disciplines are covered in the contract services;
- c. Provide world-wide, secure, and 24x7 information management and IT infrastructure service and support coverage as needed;
- d. Provide a comprehensive performance and solutions-based contract;
- e. Contribute to the achievement of CDC's program goals and CDC's IT Strategic Plan;
- f. Ensure rigorous and fair competition initially and continuously; and
- g. Contribute favorably to CDC's small business contracting goals.

HHS Section 508 Product Assessment Template at <http://508.hhs.gov> .

**C.6 Task Performance – Requirements, Place, Time**

Independently, and not as an agent of the Government, the Contractor shall perform work as described in individual task orders. The Contractor shall perform the services following all applicable federal government laws, regulations, policies, and standards. Commercially acceptable practices shall be employed and the Contractor should make recommendations to the Contracting Officer Technical Representative that could improve the project outcomes such as best practices, state-of-the-art approaches, and employing new methodologies and technologies.

**a. Contractor Assets, Locations, and Time**

The Contractor shall provide all necessary facilities, management, supervision, labor, training, equipment, materials, and supplies and all other things, including third party licensing agreements, except as specifically indicated by CDC, necessary to perform the specified services and support as defined in this SOW, for all CDC locations (includes non-Atlanta based locations) as specified in this contract. All IT equipment and software provided by the Contractor in support of this contract shall be reviewed and approved by CDC.

The Contractor shall exercise its best efforts in performing the required services and shall employ and retain competent, qualified personnel who shall perform services in a complete, prompt, high quality, courteous, and efficient manner. The Contractor shall not recruit on Government premises or otherwise act to disrupt Government business.

Work under this contract may be performed onsite at CDC involving substantial interaction with a wide range of professional and support staff at CDC or at the Contractor's facilities depending on the nature of the work as specified in each task order. Some work requires regular access to CDC facilities, equipment, or staff and therefore may require onsite presence. In such cases, CDC will provide the necessary space, equipment, and other assets as specified in the task order.

The Contractor's Program Director and/or Program Manager, or other management personnel depending on the situation, must be available to meet with the CDC Contracting Officer Technical Representatives and other Government representatives at anytime in person or by video or teleconference. Every attempt will be made to schedule such meetings at a mutually convenient time; however, the Contractor may be required to meet in person or by video or teleconference in an emergency with little to no advance warning, such as within 4 hours.

When working at CDC facilities, the Contractor's regular onsite services shall generally be provided for an 8-hour period (excluding lunch time), as specified in the task order, between the core hours of 6:00 am and 6:00 pm, Monday through Friday, excluding Federal holidays or other time of facility closings, such as for hazardous weather. There may be instances depending on the task order requirements that broader time coverage will be required. In addition, due to the nature of the computing environment at CDC and needs arising from emergency outages, problems, or special requirements, the Contractor may be required to work outside the normal hours and days listed above. This could be on a prescheduled basis or an emergency call-in basis. Further, there are or could be instances where the Contractor is required to perform regular or emergency services on a 24 hour by 7 day a week basis, such as for CDC Data Center operations, network equipment maintenance, security services, or public health emergencies.

**b. Telework (See Clause H.66)**

The Contractor is authorized to enable contractor staff to telework when onsite presence is not required. The Contractor shall provide adequate oversight of work products to ensure contract adherence. Contractors shall have formal telework policies in place if telework is employed.

## EXHIBIT 2

# Solicitation Document

Title : **Professional Service Schedule**

Solicitation Number : **FCO00CORP0000C**

Refresh Number : **24**

Created on February 4, 2016

## Part I - GOODS & SERVICES

### Part I - GOODS & SERVICES

#### Overview

Under the GSA Multiple Award Schedules (MAS) Program, GSA establishes long-term government-wide contracts with commercial firms to provide access to a wide array of commercial services and products. Agencies can order directly from GSA Schedule contractors, using the GSA Advantage! on-line shopping system or eBay, GSAs electronic Request for Quote (RFQ) tool.

Recognizing that the Government is operating in an environment of declining budgets and increasing demands on the acquisition workforce, GSA has worked to improve its professional services Schedule offerings. A key initiative in this area has been the consolidation of eight (8) separate professional services Schedules into a single Professional Services Schedule (PSS).

GSA anticipates that administering and managing a single Schedule for Professional Services will significantly benefit Schedule users and industry partners by improving contract usability, reducing scope overlap between individual Schedules and facilitating the procurement of total professional service solutions under one contract vehicle.

#### Purpose

The Professional Services Schedule (PSS) enables Federal agencies to procure a wide variety of professional services using a single Schedule.

All work shall be performed in accordance with the most current edition of all applicable laws, regulations, Executive Orders, OMB bulletins or circulars, professional standards, etc. It is the responsibility of the contractor to properly identify and comply with all applicable requirements and standards as the specific circumstances may warrant.

#### Scope of Services

PSS Schedule contractors possess expertise related to an array of professional services, including; business consulting & program support services, financial consulting solutions, environmental services, engineering services, advertising and integrated marketing services, logistics support and language services.

PSS Special Item Numbers (SINs) are organized into the following SIN series:

Financial and Business Solutions (previously Schedule 520)

Advertising & Integrated Marketing Solutions (previously Schedule 541)

Language Services (previously Schedule 738 II)

Professional Engineering Services (previously Schedule 871)

Business Consulting & Program Support Services (previously Schedule 874 - MOBIS)

Logistics Services (previously Schedule 874 V - LOGWORLD)

Environmental Services (previously Schedule 899)

PSS Schedule contractors can offer information technology related professional services, human resource services, energy management planning & strategies, energy auditing, resource efficiency management (REM) and energy consulting services under complementary PSS SINs when those services are ancillary to the provision of a total professional services solution. Under no circumstances can the complementary PSS SINs be

used on a stand-alone basis.

PSS Schedule contracts inclusive of complementary SINs are held to the same scope descriptions as outlined in the single Schedule solicitations identified below:

03FAC - Facilities Maintenance and Management Solicitation # 6FEC-E6-030292-B, Document 2, Part I - Goods and Services, specifically SINs 871 202, 871 207, 871 208 and 871 211.

70 - General Purpose Commercial Information Technology Equipment, Software and Services Solicitation # FCIS-JB-980001-B, Document 2, Part I - Goods and Services, specifically SIN 132 51.

738X - Human Resources and Equal Employment Opportunity Services Solicitation # 2FYA-AR-060004-B, Document 2, Part I - Goods and Services, specifically, SIN 595 21.

For more information on a particular SIN series such as purpose, scope of services, special instructions and/or advisories, please refer to the solicitation attachment entitled, Part I Goods & Services Addendum.

#### SOLICITATION NOTICES:

NOTICE 1: The transition to PSS has significantly impacted our offer processing times and has led to a backlog of new offers. Due to the offer backlog, it may take up to 12 months or longer before an offer is evaluated. GSA evaluates offers using a first-in first-out methodology to ensure that all business concerns (small and other than small) have a fair opportunity to receive a timely and thorough offer evaluation. Offers resubmitted following a prior offer rejection will be processed using a first-in first-out methodology based on the date that the current offer was received. To facilitate the timely review of all offers, we highly encourage offerors to ensure that their offer fully complies with solicitation Part IV-Evaluation Factors for Contract Award. All offerors will receive a system generated New Offer Welcome Letter via email with details regarding the processing of their offer.

NOTICE 2: The contractor shall be responsible for obtaining all necessary permits and licenses and for complying with all applicable Federal, State, and Municipal laws. The contractor shall ensure that its staff maintains any generally required professional certification, accreditation, and proficiency relative to their area of expertise. The contractor shall retain documentation of such records. The Government will not pay for expenses to meet this requirement.

NOTICE 3: The contractor shall be responsible for furnishing all items used in performing the Task Order unless otherwise specified or approved by the Contracting Officer. The contractor will act independently and not as an agent of the Government. The contractor shall furnish all services, experienced personnel, materials, equipment, and/or facilities in accordance with the specific requirements outlined in the Task Order issued by the individual agency. The contractor shall initiate work only when directed by a Task Order and which has been signed by a Contracting Officer from the ordering agency. Upon termination or completion of all work under the Task Order, the contractor shall comply with the agency's requirements for disposal.

NOTICE 4: Contractor Team Arrangements: Contractor Team Arrangements are encouraged under the Federal Supply Schedules Program, for additional information see our website at [www.gsa.gov/ctas](http://www.gsa.gov/ctas).

NOTICE 5: Personal Services Contracts as defined in FAR 37.101 and FAR 37.104 are strictly prohibited. Agencies are prohibited from utilizing service contracts to augment government staff. A contractor is equally prohibited from knowingly offering to supplement government staff by engaging in a personal services contract/task order.

NOTICE 6: Architect-Engineering (A/E) Services as that term is defined in FAR 36.601-4 are excluded from the Schedules Program. If the agency statement of work, substantially or to a dominant extent, specifies performance or approval by a registered licensed architect or engineer for services related to real property, the Brooks Act applies and such services must be procured in accordance with FAR Part 36. Use of this schedule for Brooks Act architectural or engineering services is not authorized.

NOTICE 7: Offerors are directed to FAR 9.5 Organizational and Consultant Conflict of Interest and Clause

## EXHIBIT 3

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES 1   2	
2. CONTRACT (Proc. Inst. Ident.) NO. P14PC00680				3. EFFECTIVE DATE See Block 20C		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
5. ISSUED BY NPS, HFC - Acquisition Management 67 Mather Place IDC Building Harpers Ferry WV 25425		CODE PHF		6. ADMINISTERED BY (If other than Item 5) DOI, NPS, HFC - Acquisition Managem 67 Mather Place IDC Building Harpers Ferry WV 25425		CODE PHF	
7. NAME AND ADDRESS OF CONTRACTOR (No., Street, City, Country, State and ZIP Code)  PANNIER CORPORATION, THE Attn: ATTN GOVERNMENT POC 345 OAK RD GIBSONIA PA 15044-7994				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT  PP30			
CODE 0070474959		FACILITY CODE		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN		ITEM	
11. SHIP TO/MARK FOR CODE		CODE		12. PAYMENT WILL BE MADE BY Invoice Processing Platform System US Department of Treasury http://www.ipp.gov		CODE IPP INV	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) ( ) <input type="checkbox"/> 41 U.S.C. 253 (c) ( )				14. ACCOUNTING AND APPROPRIATION DATA See Schedule			
15A. ITEM NO		15B. SUPPLIES/SERVICES		15C. QUANTITY		15D. UNIT	
						15E. UNIT PRICE	
						15F. AMOUNT	
Continued							
15G. TOTAL AMOUNT OF CONTRACT				\$0.00			
<b>16. TABLE OF CONTENTS</b>							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	A-1	X	I	CONTRACT CLAUSES	I-1/7
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	B-1/9	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	C-1/6	X	J	LIST OF ATTACHMENTS	J-1
X	D	PACKAGING AND MARKING	D-1/2	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	E-1		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
X	F	DELIVERIES OR PERFORMANCE	F-1/2		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
X	G	CONTRACT ADMINISTRATION DATA	G-1/13		M	EVALUATION FACTORS FOR AWARD	
X	H	SPECIAL CONTRACT REQUIREMENTS	H-1/2				
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE</b>							
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input checked="" type="checkbox"/> SEALED-BID AWARD (Contractor is not required to sign this document.) Your bid on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER JALANE JOHNSON			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED 09/19/2014	
BY  (Signature of person authorized to sign)				BY  (Signature of the Contracting Officer)			

**SECTION C**  
**DESCRIPTION/SPECIFICATIONS/AND WORK STATEMENT**

1. **BACKGROUND**

As one of the nation's principal conservation agencies, the National Park Service (NPS) has the responsibility to protect some of our most treasured natural and cultural resources. In order to preserve these treasures it is important that they be interpreted in ways that help NPS visitors experience them, understand them, and appreciate their value. It is also important that those who visit National Park sites be assured that their visits are safe and enjoyable.

Since its earliest days, the NPS has relied on a variety of interpretive media to assist in the effort to protect its resources and to assure the pleasure and safety of its visitors. Among the various media used by the NPS, wayside exhibits provide the most direct interpretation of park sites and features. Because they are located in a park's outdoor environment, "waysides" offer immediate -- and readily available -- sources of information tailored to a specific place and time. No other interpretive medium can match the power of direct association of information and resource, or the convenience of on-site location.

These contracts are designed to respond to a need to establish nationwide support services for different types of National Park Service outdoor panels. Projects range in scope of small to major.

2. **PURPOSE**

The purpose of this contract is to provide fabrication of exhibit quality, fiberglass embedment, high pressure laminate, and fused polycarbonate panels for outdoor use.

3. **SCOPE OF WORK**

Independently, and not as an agent of the government, the contractor shall provide all labor, materials, equipment and facilities (except as otherwise specified), necessary to fabricate interpretive wayside exhibit fiberglass embedment, high pressure laminate, and fused polycarbonate panels for outdoor use.

## EXHIBIT 4

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE 1 OF 497 PAGES	
2. CONTRACT (Proc. Inst. Ident.) NO. <b>NNN12AA01C</b>		3. EFFECTIVE DATE <b>10/1/12</b>		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY NASA Management Office 4800 Oak Grove Drive Pasadena, CA 91109		CODE <b>NMO</b>		6. ADMINISTERED BY (If other than item 5)		CODE	
7. NAME AND ADDRESS OF CONTRACTOR  California Institute of Technology 1200 East California Boulevard Pasadena, CA 91125-0001				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT  N/A			
CODE		FACILITY CODE		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN			
11. SHIP TO/MARK FOR See Section D herein		CODE		12. PAYMENT WILL BE MADE BY NASA/Goddard Space Flight Center Accounts Department, Code 155/Bldg 17, Room S240 Greenbelt, MD 20771		CODE <b>NMO</b>	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input checked="" type="checkbox"/> 10 USC 2304(c) ( ) <input type="checkbox"/> 10 USC 253(c) ( )				14. ACCOUNTING AND APPROPRIATION DATA			
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
	See Section B herein						
15G. TOTAL AMOUNT OF CONTRACT						B-2	
16. TABLE OF CONTENTS							
DESCRIPTION				DESCRIPTION			
2	SEC	PART I — THE SCHEDULE	PAGE	2	SEC	PART II — CONTRACT CLAUSES	PAGE
✓	A	SOLICITATION/CONTRACT FORM	1	✓	I	CONTRACT CLAUSES	145
✓	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III — LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
✓	C	DESCRIPTION/SPECS/WORK STATEMENT	14	✓	J	LIST OF ATTACHMENTS	172
✓	D	PACKAGING AND MARKING	24	PART IV — REPRESENTATIONS, CERTIFICATIONS			
✓	E	INSPECTION AND ACCEPTANCE	25	K REPRESENTATIONS, CERTIFICATIONS AND			
✓	F	DELIVERIES OR PERFORMANCE	26	OTHER STATEMENTS OF OFFERORS			
✓	G	CONTRACT ADMINISTRATION DATA	32	L INSTRS., CONDS., AND NOTICES TO OFFERORS			
✓	H	SPECIAL CONTRACT REQUIREMENTS	57	M EVALUATION FACTORS FOR AWARD			
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
<input checked="" type="checkbox"/> 17. CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				<input type="checkbox"/> 18. AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print) Dean Currie, Vice President for Business & Finance				20A. NAME OF CONTRACTING OFFICER Angel A. Castillo			
19B. NAME OF CONTRACTOR CALIFORNIA INSTITUTE OF TECHNOLOGY		19C. DATE SIGNED 8/15/2012		20B. UNITED STATES OF AMERICA <i>Angel A. Castillo</i>		20C. DATE SIGNED 8/16/2012	
BY <i>[Signature]</i> (Signature of person authorized to sign)				BY <i>[Signature]</i> (Signature of Contracting Officer)			

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STANDARD FORM 26 (REV. 12/2002)  
Prescribed by GSA FAR (48 CFR) 53.214(c)

## PART I—THE SCHEDULE

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### SECTION B—SUPPLIES OR SERVICES AND PRICE/COSTS

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#### B-1 SCOPE

- (a) This Contract is the sponsoring agreement between the National Aeronautics and Space Administration (NASA) and the California Institute of Technology (Contractor), a private nonprofit educational institution, which establishes the relationship for the operation of the Federally Funded Research and Development Center (FFRDC) known as the Jet Propulsion Laboratory (JPL). This Contract is the only document that constitutes the sponsoring agreement between the parties.
- (b) As reflected in FAR 35.017, contractors operating FFRDCs are allowed access to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities beyond that which is common to the normal contractual relationship. Because of this special relationship, JPL shall be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to NASA. Additionally, the Contractor shall not use its privileged information or access to facilities to compete with the private sector in contravention of FAR 35.017. Notwithstanding the special relationship created by this sponsoring agreement, the California Institute of Technology is acting as a contractor and not as an agent of the Government.
- (c) The Contractor shall perform the work that is designated in task orders issued by the Contracting Officer using procedures set forth in Article G-5 (Task Ordering Procedure). The general areas of such work for which the Contractor is encouraged to maintain its expertise to provide a quick response capability, are described in Article C-1 (Description of Work).

#### B-2 ESTIMATED COST

- (a) The estimated cost of this Contract will be the sum of the estimated costs set forth in task orders issued hereunder, including all amendments thereto. It is anticipated that the Government will allot funds to task orders from time to time, and such funds shall be available for the payment of allowable costs incurred in the performance of work under the task orders, until the funds allotted equal the estimated costs set forth in the task orders. The amount of such allotted funds, as it may be changed from time to time, shall be specified in each task order.
- (b) The minimum amount of supplies or services that shall be ordered during the effective period of this contract is \$1,000,000. The maximum amount of supplies or services that may be ordered for the five (5) year period of the contract is \$8,500,000,000. Notwithstanding the maximum amount of the Contract, the Government is not obligated to order work under this Contract beyond the minimum amount set forth above.

## EXHIBIT 5

<b>SOLICITATION, OFFER AND AWARD</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES 1 96	
2. CONTRACT NUMBER		3. SOLICITATION NUMBER HHSM-500-2016-RFP-0003		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 11/06/2015	
7. ISSUED BY CMS, OAGM, ASG, DPIFMC 7500 SECURITY BLVD., MS: B3-30-03 BALTIMORE MD 21244-1850		CODE ASG - DPIFMC		8. ADDRESS OFFER TO (If other than Item 7)			

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

#### SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ B3-30-03 _____ until _____ 1100 ES _____ local time _____ 12/11/2015 _____ (Hour) (Date)				
CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.				
10. FOR INFORMATION CALL:	A. NAME Justin Menefee	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS Justin.Menefee@cms.hhs.gov
	AREA CODE 410	NUMBER 786-7629	EXT.	

#### 11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	1	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	50-61
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	6-8	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	9	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	62
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	10	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	11	<input checked="" type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	63-69
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	12-14	<input checked="" type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	70-87
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	15-24	<input checked="" type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	88-96
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	25-49				

#### OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.					
13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)		10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):		AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
15A. NAME AND ADDRESS OF OFFEROR		CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER		15C. CHECK IF REMITTANCE ADDRESS <input type="checkbox"/> IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.		17. SIGNATURE	
AREA CODE	NUMBER	EXT.	18. OFFER DATE		

#### AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) ( ) <input type="checkbox"/> 41 U.S.C. 253 (c) ( )					
23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM			
24. ADMINISTERED BY (If other than Item 7)		CODE	25. PAYMENT WILL BE MADE BY		CODE
26. NAME OF CONTRACTING OFFICER (Type or print) Nicole Hoey		27. UNITED STATES OF AMERICA  (Signature of Contracting Officer)			28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.  
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# Statement of Work for the Part A/B Medicare Fee-for-Service Recovery Audit Program – Region 1

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## ***Purpose***

The Recovery Audit Program's mission is to reduce Medicare improper payments through the efficient detection and correction of improper payments.

The purpose of this statement of work (SOW) includes all tasks and responsibilities associated with the review of Medicare Fee-for-Service (FFS) claims submitted to the A/B Medicare Administrative Contractors (MACs) in Recovery Audit Region 1 (see map in the Appendices section). This excludes Durable Medical Equipment, Prosthetics, Orthotics, and Supply (DMEPOS) claims and Home Health/Hospice (HH/H) claims. The Recovery Auditor shall review all applicable claim types submitted to an A/B MAC through the appropriate review methods and work with the Centers for Medicare & Medicaid Services (CMS) and MACs to effectuate the adjustment of claims, recoupment of overpayments, payment of underpayments, support the appeals process and reporting the status of all reviews by updating the Recovery Audit Data Warehouse (the "Data Warehouse") and providing monthly reports in a timely, accurate, and efficient manner.

This SOW includes the following tasks, which are defined in detail in subsequent sections:

1. The Recovery Auditor shall perform postpayment review to identify Medicare claims that contain improper payments (overpayments or underpayments), which were made under Part A or Part B of Title XVIII of the Social Security Act. This includes review of all Medicare claim and provider types (excluding DMEPOS and HH/H) and a review of claims/providers that have a high propensity for error based on the Comprehensive Error Rate Testing (CERT) program and other CMS analysis. This also includes: requesting, obtaining, storing, sharing, and paying for medical documentation (for complex reviews); communicating review statuses and results (via letters and a web-based portal) to providers; maintaining case files; participating in discussion periods with providers; and, sending claims for adjustment.
2. The Recovery Auditor shall utilize the Data Warehouse as the central repository for all claims information in the Recovery Audit Program. This includes consistently updating the Data Warehouse timely with complete and accurate claim information and statuses on all reviews to prevent interference with law enforcement/fraud investigations and duplicating work on claims that have already been reviewed.

The CMS is required to actively review Medicare payments for services to determine accuracy and, if errors are identified, to pursue the collection of any payment made in error. To gain additional knowledge, offerors may research the following documents:

- The Financial Management Manual (specifically, Chapter 4, section 100) and the Program Integrity Manual (PIM) (specifically, Chapter 3) at [www.cms.hhs.gov/manuals](http://www.cms.hhs.gov/manuals)
- The Debt Collection Improvement Act of 1996
  - SEC. 31001 - (3)(A)(ii)(c)(6) and (7)(A)(B)
- The Federal Claims Collection Act, as amended and related regulations found in 42 CFR
  - Title 42 CFR Subpart D – Medicare Integrity Program Contractors
  - Title 42 CFR Subpart E – Medicare Administrative Contractors
- Comprehensive Error Rate Testing Reports (see [www.cms.hhs.gov/cert](http://www.cms.hhs.gov/cert))
- Recovery Audit Program Status Documents and Reports to Congress (see <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/> )
- Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), Title 2 -- PREVENTING HEALTH CARE FRAUD AND ABUSE; ADMINISTRATIVE SIMPLIFICATION; MEDICAL LIABILITY REFORM
  - Subtitle C – Data Collection
  - Subtitle F – Administrative Simplification

Throughout this document, the term “improper payment” is used to refer collectively to overpayments and underpayments. Situations where the provider submits a claim containing an error (such as an incorrect code, or incorrect/missing modifier), but the payment amount is not altered by the error, are not considered improper payments for the Medicare FFS Recovery Audit Program.

### **General Requirements**

Independently and not as an agent of the Government, the contractor shall furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the Government, as needed to perform all requirements of this SOW. CMS will provide minimum administrative support, which may include standard system changes when appropriate, help communicating with Medicare contractors, policy interpretations as necessary and other support deemed necessary by CMS to allow the Recovery Auditor to perform their tasks accurately and efficiently. The CMS will support changes it determines are necessary but

## EXHIBIT 6



**Chief Information Officer –  
Solutions and Partners (CIO-SP3)  
(Unrestricted)**

**REQUEST FOR PROPOSAL (RFP)  
NIHJT2010001**



## **SECTION C: DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

### **Article C.1 Introduction**

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This contract is intended to provide IT solutions and services as defined in FAR 2.101(b) and further clarified in the Clinger-Cohen Act of 1996. NITAAC intends to award multiple IDIQ contracts for acquiring a wide range of IT services and solutions for the Institutes and Centers (ICs) of the NIH, for the Department of Health and Human Services (DHHS), and for all other federal agencies. These IT services include health, health science and biomedical-related IT services to meet scientific, health, administrative, operational, managerial, and information management requirements. The contract also contains general IT services partly because healthcare systems are increasingly integrated within a broader IT architecture, requiring a systems approach to their implementation and a sound infrastructure for their operation. The focus of this contract is to provide to government agencies a mechanism for quick ordering of needed IT solutions and services at equitable and reasonable prices.

The task areas included in the contract, in particular the Task Area 1, "IT Services for Biomedical Research, Health Sciences and Healthcare," support and provide consistency with the accountability goals of the Federal Health Architecture (FHA), whereby federal agencies are to coordinate effective capital planning activities and invest in and implement interoperable health IT.

The task areas included in the contract are also designed to support the IT services described in the Federal Enterprise Architecture (FEA). Several examples follow:

- 1) Task Area 2 (Article C.2.2), Chief Information Officer (CIO) Support can be used to develop and maintain agency enterprise architectures, in support of the FEA.
- 2) For inherently IT components of the FEA, CIO-SP3 includes task areas that directly address those components. For example, the FEA includes document management as a digital asset service in the Service Reference Model (SRM) that can be addressed through Task Area 8 (Article C.2.8), Digital Government.
- 3) For non-IT components of the FEA, the contract includes task areas that support the automation of those components. For example, supply chain management is a business management service in the SRM. Task Area 9 (Article C.2.9), Enterprise Management Systems includes the services needed to automate supply chain management.
- 4) Several FEA components provide support for the execution of IT functions, e.g., customer relationship management, a customer service in the SRM. These components can be supported through Task Area 4 (Article C.2.4), Outsourcing and Task Area 5 (Article C.2.5), IT Operations and Maintenance (O&M).
- 5) The FEA Technical Reference Model (TRM) includes standards and technology that would be selected and integrated into systems under specific task orders. For example, web servers are a delivery server in the TRM that could be selected and installed as part of Digital Government task area. In general, all task areas ultimately to be awarded under the contract must be compatible with the agency architecture defined by the agency's TRM. The standards and technology of the TRM will always be incorporated into the systems that are planned and developed under task orders awarded under the contract.
- 6) The contract can be used to award task orders that support the Performance Reference Model (PRM) by collecting agency metrics affected by the task. All task areas involve collecting applicable data for the PRM measurement category of Information and

## EXHIBIT 7

# ORDER FOR SUPPLIES OR SERVICES (FINAL)

PAGE 1 OF 2

1. CONTRACT NO. N00178-08-D-5449		2. DELIVERY ORDER NO. MUT1		3. EFFECTIVE DATE 2011 Sep 28		4. PURCH REQUEST NO. M00264-11-NR-55026		5. PRIORITY Unrated				
6. ISSUED BY RCO Quantico 3250 Catlin Ave Quantico VA 22134-5001		CODE M00264		7. ADMINISTERED BY DCMA Manassas 10500 BATTLEVIEW PARKWAY, SUITE 200 MANASSAS VA 20109-2342		CODE S2404A		8. DELIVERY FOB DESTINATION OTHER (See Schedule if other)				
9. CONTRACTOR <del>ICF Incorporated, L.L.C.</del> ICF Incorporated, L.L.C. 9300 Lee Highway Fairfax VA 22031		CODE 5M571		FACILITY		10. DELIVER TO FOB POINT BY (Date) See Schedule		11. X IF BUSINESS IS SMALL SMALL DISADVANTAGED WOMEN-OWNED				
14. SHIP TO See Section D		CODE		15. PAYMENT WILL BE MADE BY DFAS Columbus Center, South Entitlement Operations P.O. Box 182264 Columbus OH 43218-2264		CODE HQ0338		MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.				
16. TYPE OF ORDER DELIVERY/ CALL PURCHASE		X		This delivery order/call is issued on another Government agency or in accordance with and subject to terms and conditions of numbered contract. Reference your furnish the following on terms specified herein. ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.								
ICF Incorporated, L.L.C. <del>ICF Incorporated, L.L.C.</del>		F. Michael Gray <i>F. Michael Gray</i>		F. Michael Gray Vice president, Director of Contracts		10/5/2011		DATE SIGNED (YYYYMMDD)				
NAME OF CONTRACTOR		SIGNATURE		TYPED NAME AND TITLE								
If this box is marked, supplier must sign Acceptance and return the following number of copies:												
17. ACCOUNTING AND APPROPRIATION DATA/LOCAL USE See Schedule												
18. ITEM NO.		19. SCHEDULE OF SUPPLIES/SERVICES			20. QUANTITY ORDERED/ ACCEPTED *		21. UNIT		22. UNIT PRICE		23. AMOUNT	
		See Schedule										
If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.		24. UNITED STATES OF AMERICA					25. TOTAL		\$999,212.56			
		BY: /s/Jerri Newton					09/28/2011		26. DIFFERENCES			
		CONTRACTING/ORDERING OFFICER										
27a. QUANTITY IN COLUMN 20 HAS BEEN												
INSPECTED		RECEIVED		ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED:								
b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE					c. DATE		d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE					
e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE					28. SHIP NO.		29. D.O. VOUCHER NO.		30. INITIALS			
f. TELEPHONE					g. E-MAIL ADDRESS		32. PAID BY		33. AMOUNT VERIFIED CORRECT FOR			
36. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT.					31. PAYMENT		COMPLETE		34. CHECK NUMBER			
a. DATE					b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		PARTIAL		35. BILL OF LADING NO.			
37. RECEIVED AT					38. RECEIVED BY (Print)		39. DATE RECEIVED		40. TOTAL CONTAINERS		41. S/R ACCOUNT NUMBER	
									42. S/R VOUCHER NO.			

CONTRACT NO. N00178-08-D-5449	DELIVERY ORDER NO. MUT1	PAGE 4 of 22	FINAL
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## SECTION C DESCRIPTIONS AND SPECIFICATIONS

### Camp Lejeune Historic Drinking Water Support For Headquarters Marine Corps

#### 1. INTRODUCTION

The contractor shall provide support to the U. S. Marine Corps (USMC) for the Camp Lejeune Historic Drinking Water issue. The contractor shall provide comprehensive technical, document management, and outreach support for various aspects and initiatives for this issue as described herein.

**1.1 Background.** In the early 1980's, solvents (perchloroethylene (PCE), trichloroethylene (TCE), benzene, and other volatile organic compounds (VOCs)), unregulated at the time, were found in two drinking water systems that served portions of Marine Corps Base Camp Lejeune. The groundwater serving certain drinking water wells was later identified as the source of the chemicals. The impacted wells were taken out of service as they were identified through sampling between late 1984 and early 1985. Estimates from the Agency for Toxic Substances and Disease Registry (ATSDR) indicate the water may have been impacted from as early as 1957 to as late as 1987. The Marine Corps has a comprehensive program in place to notify former residents and workers of this issue and is supporting research initiatives to determine whether or not exposure to these chemicals may have caused adverse health effects. The support covered under this statement of work will assist the Marine Corps in meeting these and other similar requirements.

#### 2. TASK REQUIREMENT

The contractor's employees will at all times conduct themselves in a manner compatible with the non-personal services nature of this contractual instrument. The contractor's workforce will not be under the supervision and control of a Government officer or employee. The contractor, as an independent contractor and not as an agent of the Government shall provide the support necessary to provide overall technical assistance and support for the following. The tasks below are non-severable.

##### 2.1 Meetings/Work Plan.

##### 2.1.1 Kickoff Meeting.

The contractor shall participate in a Kickoff Meeting with the USMC to discuss the work to be accomplished under this contract. During the meeting the objectives and deliverables under this contract will be discussed, as well as identify points of contact. The Kickoff meeting will provide the contractor the opportunity to discuss issues, identify the various stakeholders and initiatives, and to identify data sources and procedures to accomplish the objectives. The objectives of the Kickoff Meeting are to:

- Clarify the Marine Corps' program goals for the contract
- Identify Points of Contact (POC)
- Identify the locations of pertinent information and data
- Identify various policy issues
- Determine responsibilities and coordination requirements
- Review the tasks and schedule.

##### 2.1.2 Work Plan

**CERTIFICATE OF SERVICE**

I, Alan L. Chvotkin, hereby certify that a true and correct copy of the foregoing Petition for Reconsideration was sent by first-class, postage prepaid mail, on the 4th day of August, 2016, to the following:

Bryan N. Tramont  
Joshua M. Bercu  
Patrick R. Halley  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
*(Attorneys for Broadnet Teleservices LLC)*

Paul Luttrell, NENA Chairman  
Adelante Enterprises  
3900 Osuna Rd NE  
Albuquerque, NM 87111

Susan Webb, NENA President  
ABIL Employment Services  
5025 E Washington, Suite 200  
Phoenix, AZ 85034

Mark W. Brennan  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
*(Counsel to RTI International)*

Margot Saunders  
Of Counsel  
National Consumer Law Center  
1001 Connecticut Ave, NW  
Washington DC 20036

Alison Kutler, Bureau Chief, Consumer and Governmental Affairs Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

William T. Miller  
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1015 15th Street, N.W., 12<sup>th</sup> Floor  
Washington, D.C., 20005  
*(General Counsel for American Public Gas Association)*

Desmarie Waterhouse  
Senior Government Relations Director & Counsel  
American Public Power Association  
2451 Crystal Dr., Suite 1000  
Arlington, VA 22202

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Stinson Leonard Street  
1775 Pennsylvania Ave. N.W.  
Washington, D.C. 20006  
(*Counsel for American Public Power Association*)

Robert Biggerstaff  
POB 614  
Mt. Pleasant, SC 29465

California Department of Child Support Services  
11120 International Drive  
Rancho Cordova, CA 95741

Child Support Directors Association of California  
2150 River Plaza Drive, Suite 420  
Sacramento, CA 95833

Child Support Payment Services  
2001 South Calument, #608  
Chicago, IL 60616

Child Support Service and Information Systems Manager  
Contra Costa County Dept. of Child Support Services  
50 Douglas Drive, Suite 100  
Martinez, CA 94553

Darryll Grubbs  
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(*Attorney for Frederick Luster*)

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16822 Stardale Lane  
Friendswood, TX 77546

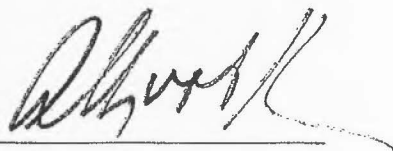
Howard Fienberg  
Director of Government Affairs  
Marketing Research Association  
1156 15th St NW, Suite 302  
Washington, DC 20005

The Honorable G.K. Butterfield  
U.S. House of Representatives  
2305 Rayburn House Office Building  
Washington, DC 20515

The Honorable Renee Ellmers  
U.S. House of Representatives  
1210 Longworth House Office Building  
Washington, DC 20515

The Honorable Robert Latta  
U.S. House of Representatives  
1323 Longworth House Office Building  
Washington, DC 20515

The Honorable David Price  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, DC 20515

A handwritten signature in dark ink, appearing to read 'A. Chvotkin', is written over a horizontal line.

Alan L. Chvotkin